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File No. O Requisitioning /47

Legal **DEPARTMENT**
A **BRANCH**

~~Subject:—~~ P3E

Opinions under the Bombay Land Requisitioning ordinance, 1947

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Office of the R.L.A.

It appears that one Mr. Dallas has obtained a decree for ejectment of his 12 old tenants, and in execution of that decree those tenants are going ~~xx~~ to be evicted tomorrow at about 8-0 a.m. Government proposes to requisition those premises to restore those evicted tenants. Mr. Dallas appears to contend that he has agreed to let out those premises to other tenants long before the Ordinance No. 5 of 1947 came into operation, and would not therefore be bound to give intimation to Government that the premises were vacant. The question raised for the consideration of the R.L.A. are :-

(1) Is there any legal objection to restore tenants evicted by a court of law ? Would it be contempt of court ?

(2) Is the Ordinance inoperative in the case of leases or agreements of lease entered into before the coming into force of the Ordinance ?

2. Sub-section (4) of section 4 of the Bombay Land Requisition Ordinance, 1947, provides :-

> "Whether or not an intimation under sub-section (1) is given and notwithstanding anything contained in section 3, the Provincial Government may, by order in writing, requisition the premises and may use or deal with the premises in such manner as may appear to it to be expedient."

This provision is very wide and gives ample discretion to Government to requisition the vacant premises. Consequently, there will be no legal objection to Government requisitioning these premises as soon as the tenants are evicted by the court and to restore those evicted tenants. There would arise no question of contempt of court, for the premises would be requisitioned by Government after the tenants are evicted in execution of the court's decree, that is to say, after the court's order is duly complied with.

3. Sub-section (1) of section 4 of the Ordinance provides :—

"If any premises situate in an area specified by the Provincial Government, by notification in the official gazette, are vacant on the date of such notification and whenever any such premises become vacant after such date either by the landlord ceasing to occupy the premises or by the termination of tenancy or by the eviction of a tenant or by the release of premises from requisition or otherwise, the landlord of such premises shall give intimation there of in the prescribed ~~form~~ form to an officer authorised in this behalf by the Provincial Government".

(P.T.O.)

It is apparent from this provision that as soon as the premises are vacant, be it for any one of the reasons stated above, the landlord would be bound to give intimation thereof to the officer authorised by Government in this behalf. In the present case, the premises would be vacant only when the tenants would be evicted by due process of law, that is to say, in execution of the ejectment decree. The fact that the landlord has agreed to let out these premises long before the Ordinance came into operation would not mean that the premises are being continued to be occupied by the prospective tenants without being vacant. Consequently, the agreements of lease, if any, would not absolve the landlord from giving intimation to Government as provided in sub-section (1) of section 4, and if after such intimation, Government requisition the premises, the agreements of lease would be inoperative by reason of "frustration". In this connection, it may be noted that sub-section (3) of section 4 of the Ordinance provides that a landlord shall not, without the permission of Provincial Government, let the premises before giving such intimation and for a period of one month from the date on which such intimation is given. It follows, therefore, that the Ordinance would not be inoperative in the case of agreements to lease entered into before the coming into force of the Ordinance. If, however, the new lessees have occupied the premises by the time the Ordinance came into force, their leases would remain unaffected by the Ordinance.

Remembrancer of Legal Affairs.

U.R. to Health and Local Government Department, No. 13022, dated the 16th December 1947.